IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004333

First-tier Tribunal No: PA/60743/2023
LP/04618/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 December 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MAK
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Holmes, instructed by Hi Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 17 December 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed her appeal against the respondent's decision to refuse her asylum and human rights claim.

2. The appellant is a national of Namibia whose date of birth is 9 December 1987. She claims to have left Namibia on 6 February 2022 and travelled to South Africa, and from there to Turkey. She arrived in the UK on 19 May 2022 by air from Turkey. She applied for asylum at the airport on 19 May 2022. Her claim was refused on 28 October 2023 and she appealed against that decision.

3. The appellant claims to fear gender-based violence at the hands of her cousin JH in Namibia, having been physically, emotionally and sexually abused by him when she was living there. She claims to suffer from mental health problems due to that abuse. In addition she is diabetic and has epilepsy.

4. The respondent, in refusing the appellant's claim, accepted that she had suffered violence from her cousin in Namibia but considered that she was not at risk on return to that country because there was a sufficiency of protection available to her and she could also safely and reasonably relocate to another part of the country. The respondent considered that the appellant had no established family life in the UK and that, in terms of her private life, there were no very significant obstacles to her integration in Namibia. It was considered that her removal to Namibia would not breach her human rights.

5. The appellant appealed against that decision. For the appeal she produced an appeal bundle which included health documents, letters of support and a Namibian Police Force 'Statement under Oath' dated 23 October 2009. The respondent produced a Respondent's Review.

6. The appellant's appeal was heard by First-tier Tribunal Judge Jepson on 20 June 2024 and was dismissed in a decision promulgated on 21 June 2024. The judge recorded that neither Article 3 (health) nor Article 8 were relied upon by the appellant. The judge recorded that the respondent was now relying upon some credibility concerns in relation to the police report, which was in fact a retraction from the appellant of an earlier report to the police about the abuse by her cousin, on the basis of advice from her mother. The judge noted that it was not clear when that report was served on the respondent but that it appeared to be after the refusal decision but before the Respondent's Review, and that since the Respondent's Review made no reference to it when that was an opportunity to do so, that reduced the weight that could be given to the respondent's concerns about the document. The judge decided to give the report some weight, but considered that the weight was reduced by the fact that the underlying report from which the retraction stemmed had not been produced and that the appellant had given an inconstant account in her asylum interview that she had not sought help from the police. The judge was satisfied that there was a sufficient basis for concluding that the appellant would be at risk in her home area. He accepted that adequate police protection would not be available to the appellant, given the indication in the police report that it was considered by the police that this was simply a family matter. However, he did not accept that internal relocation would be unjustifiably harsh or unfeasible and neither did he find there to be any obstacles to integration in Namibia for the appellant. He found that the appellant's belief that her cousin JH would find her if she relocated was not sufficiently supported by the evidence presented. The appeal was accordingly dismissed on all grounds.

7. The appellant sought permission to appeal to the Upper Tribunal against the judge's decision on the grounds that he had applied a higher standard of proof than was appropriate for an asylum claim and had erred in his credibility assessment by requiring additional corroborative evidence.

8. Permission was refused in the First-tier Tribunal, but was subsequently granted in the Upper Tribunal on a renewed application, on the following basis:

> "4. In relation to internal relocation, the judge concluded [paragraphs 48-51] that it would not be "unjustifiably harsh or unfeasible" for the Appellant to relocate. The question for

> the judge was not whether it would be 'unfeasible' for the Appellant to relocate, but whether it would be reasonable or unduly harsh to expect her to do so. It is arguable, given the phraseology used by the judge and his reference [paragraph 50] to Articles 2 and 3, that the judge applied too restrictive a threshold to the issue of internal relocation.
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> 5. It is further arguable that the judge's reasoning on the issue of internal relocation was not adequate to explain his conclusion. Having found that the Appellant could not avail herself of state protection in Namibia, it was incumbent on the judge to consider and make findings relevant to internal relocation, including the chance that JH would be able to locate the Appellant given his contact with her family and/or identified area(s) to which the Appellant could reasonably be expected to relocate to avoid the accepted risk from JH.
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> 6. It is arguable that the judge erred by imposing too high a threshold in relation to internal relocation, and that his reasoning on the issue was not adequate given his conclusions on risk and the availability of state protection."

9. The matter then came before me for a hearing. Both parties made submissions.

10. Mr Holmes submitted that there were two limbs to the grounds and grant of permission. Firstly, that the judge, in concluding that it would not be "unjustifiably harsh or unfeasible" for the appellant to relocate, had applied the wrong test and had in fact applied the unjustifiably harsh test in Article 8 which involved the higher threshold of the balance of probabilities. Secondly, that there was a failure to take account of material matters, namely the extent of the risk and how the appellant's subjective fear would impact upon her.

11. Ms Cunha submitted that the 'unduly harsh' test, as considered in Januzi v. Secretary of State for the Home Department & Ors [2006] UKHL 5, was on the balance of probabilities and therefore the judge applied the right standard of proof. She submitted that the judge considered the right issues when assessing whether it would be unduly harsh for the appellant to relocate and he gave reasons for concluding as he did. It was for the appellant to make out her case and the judge was entitled to find that she had failed to do so given the absence of any evidence to suggest that her state of mind and subjective fear meant that it would be unduly harsh to expect her to relocate.

12. Mr Holmes did not make any further submissions in response.

Analysis

13. The only challenge to the judge's decision was in relation to his findings on internal relocation, the other aspects of her case having been accepted. It is the appellant's case that the judge applied the wrong test when considering internal relocation, that he failed to give adequate reasons for his conclusions and that he applied too high a standard of proof.

14. In my view the grounds are not made out. As Ms Cunha submitted, the test to be applied when considering internal relocation is set out in the case of Januzi and is "whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so." Although Judge Jepson used the terms "unjustifiably harsh" and "unfeasible" at [48] and [50] it is clear from his self-direction at [35] and his findings thereafter that what he considered was in substance the reasonableness/ unduly harsh test. There is nothing in the judge's findings to suggest that he applied the wrong standard of proof or set too high a threshold in undertaking

his assessment. Having concluded, at [36] to [37], that the appellant could safely relocate and would be at no risk from her cousin upon relocation, he went on, at [38] to [44] and [48] to [52] to consider the difficulties that the appellant may face in relocating, in terms of employment, accommodation, support, language, access to healthcare and being far from her home. All of those were matters relevant to the reasonableness/ unduly harsh test. The judge addressed each in turn, giving cogent reasons as to why he did not consider that any of those matters would result in unreasonable or unduly harsh expectations. In so far as the grant of permission suggests that the reference by the judge at [50] to Article 2 and 3 indicated too restrictive a threshold to the internal relocation issue, that is clearly not the case. The judge was merely concluding that the appellant could safely relocate to another part of the country, in addition to it being reasonable to expect her to do so, as he had previously explained. In the circumstances there is no merit in the assertion that the judge erred in his application of the relevant test when assessing internal relocation.

15.As for the second part of Mr Holmes' challenge to the judge's decision, I consider that that also lacks merit and that the challenge is not made out. As already stated, the judge gave full and cogent reasons as to why the appellant could reasonably be expected to relocate to another part of Namibia. The judge considered the extent of the risk to the appellant in some detail at [36] and [37] and properly concluded that, on the evidence, the appellant had not shown that her cousin would have the means by which to locate her in another part of the country. Mr Holmes submitted that the judge failed, when assessing whether it was reasonable to expect her to relocate, to go on to consider the appellant's subjective fear of her cousin and the impact of that fear, in terms of having to look over her shoulder all the time in the belief that he would track her down. However that was what the judge did at [53], having given careful assessment to the evidence as a whole. In so far as it is asserted in the grounds that the judge erred in that paragraph by imposing a requirement for corroboration, I agree with Ms Cunha that the judge was simply observing that the appellant had not made out her case; that she had failed to show that the impact of any subjective fear on her mental health was such as to make relocation an unreasonable alternative.

16.For all these reasons I find nothing of merit in the grounds. The judge followed the correct approach to the question of internal relocation and took account of all relevant matters. His findings in that regard were supported by full and cogent reasoning. The decision that he reached was one which was fully and properly open to him on the evidence available to him. Accordingly I uphold his decision.

Notice of Decision

17.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Anonymity Order
The Anonymity Order previously made is continued.

Signed: S Kebede
Upper Tribunal Judge Kebede

Immigration and Asylum Chamber

17 December 2024